

Explanatory Statement

Issued by the authority of the Australian Communications and Media Authority

COMMERCIAL TELEVISION CONVERSION SCHEME VARIATION 2007 (No. 1)

Broadcasting Services Act 1992

Background, purpose and legislative basis

This document provides an explanation of the *Commercial Television Conversion Scheme Variation 2007 (No. 1)*, made under subclause 6(1) of Schedule 4 to the *Broadcasting Services Act 1992* (the BSA).

In 1998, the *Television Broadcasting Services (Digital Conversion) Act 1998* inserted Schedule 4 into the BSA. Schedule 4 provides for the conversion of transmission of broadcasting services from analog mode to digital mode.

Subclause 6(1) of Schedule 4 required the Australian Broadcasting Authority (ABA) to formulate a scheme for the gradual conversion of the transmission of commercial television broadcasting services from analog mode to digital mode.

Consequently, in 1999 the ABA made the *Commercial Television Conversion Scheme 1999* (the Scheme) applicable to commercial television broadcasting services (as defined in clause 2 of Schedule 4 to the BSA) throughout Australia. An equivalent Conversion Scheme applying to national television broadcasting services the *National Television Conversion Scheme 1999* (the National Scheme), was also made in the same year.

From 1 July 2005, the ABA merged with the Australian Communications Authority (ACA) to form the Australian Communications and Media Authority (ACMA). ACMA took over the performance of the powers and functions under the BSA previously performed by the ABA, including all powers and functions in relation to the Commercial and National Schemes.

The Scheme is divided into two Parts (Part A and Part B). Part A applies to commercial television broadcasting services in non-remote (ie regional and metropolitan) coverage areas, and Part B applies to remote coverage areas. Each part contains rules for:

- the creation of digital channel plans by ACMA, which allot digital channels to commercial television broadcasters for the transmission of their services;
- the creation of implementation plans by commercial broadcasters which outline the roll-out process for digital services by commercial television broadcasters;
- test transmissions of digital services; and
- other matters necessary for the conversion of the transmission of broadcasting services from analog to digital mode.

Over time, both Schedule 4 to the BSA and the Scheme have been varied in response to the changing broadcasting environment. The variations to the Scheme are intended to update it to reflect:

- changes required by amendments made to Schedule 4 to the BSA by the *Broadcasting Legislation Amendment Act (No. 1) 2006* and the *Broadcasting Legislation Amendment (Digital Television) Act 2006*; and
- changes to Part B of the Schemes that, from a policy perspective, are consequential to changes resulting from the Schedule 4 amendments; and
- the formation of ACMA from the ABA and the ACA in 1 July 2005.

Amendments to Schedule 4 to the Broadcasting Services Act 1992

In November 2006, Federal Parliament passed the *Broadcasting Legislation Amendment Act (No. 1) 2006* (the BLAA) and the *Broadcasting Legislation Amendment (Digital Television) Act 2006* (the DTA). Both Acts amended Schedule 4 to the BSA, including provisions relating to the Scheme. As a result, ACMA intends to make a series of variations to the Scheme reflecting these amendments.

Part B policy changes consequential to the Schedule 4 amendments

When developing Part B of the Scheme, the ABA took a gradual approach to the conversion of remote area television services from analog to digital mode. Pursuant to clause 14 of Schedule 4 to the BSA, this acknowledges the “special circumstances” that apply in remote areas to the transmission of commercial television broadcasting services, including the greater costs and difficulties of providing terrestrial television services in remote areas owing to the greater distances and smaller markets involved.

However, in order to maximise consistency between areas of Australia it was always intended that over time that Part B would be brought as closely into line with Part A as possible (notwithstanding clause 14 of Schedule 4 to the BSA).

Certain amendments to Schedule 4 of the BSA made by the BLAA relate to multi-channelling elections for remote area commercial television broadcasting services, dealt with by Part B of the Scheme. These amendments are designed to make it easier for commercial television broadcasting licence holders delivering services in remote areas to engage in the conversion process. ACMA has therefore varied Part B of the Commercial Scheme to reflect those BLAA amendments.

As a result of these amendments, ACMA has made variations to provisions in Part B of the Scheme that tighten the conversion process for commercial television services in remote licence areas. These variations consist of adopting relevant provisions from Part A into Part B of the Scheme. The expectation is that, as a result of the new multi-channelling rules, the conversion process in remote areas will accelerate, and the Scheme is varied to account for this.

The formation of ACMA

Although ACMA was formed on 1 July 2005, the Scheme was last varied in 2003 and therefore continued to make references to the ABA and the ACA. As part of this variation process these references have been changed to refer to “ACMA”. This often

involves a straight substitution of terms, however, in certain provisions (for example those which required the ABA to “make arrangements with the ACA”) such a substitution is inappropriate and other changes have been made.

In these cases the intention is for the Scheme to refer to ACMA instead of ACA or ABA without altering the meaning of the provision. Where a provision previously required the ABA to make arrangements for the ACA to perform a statutory function (for example, to issue, vary or impose conditions upon, transmitter licences) this provision has been modified to require ACMA to perform that function in the same circumstances. Furthermore, where the exercise of those powers by the ACA was subject to conditions, the provision now specifies that the powers now exercised by ACMA are subject to those same conditions.

Consultation

Section 17 of the *Legislative Instruments Act 2003* states that where a legislative instrument is likely to have a direct, or substantially indirect, effect on business, or restrict competition, then any person likely to be affected by the instrument must be provided with an adequate opportunity to comment. Additionally, under clause 18 of Schedule 4 to the BSA ACMA must make provision for public consultation when varying the Scheme.

Consequently, ACMA released the draft amendments to the Scheme for public comment via a news release and information on its web site on 8 June 2007.

Additionally, on this date ACMA wrote to commercial television broadcasters, national broadcasters and the owners and operators of broadcasting transmission towers informing them of the variations as proposed and inviting comment.

The closing date for submissions as part of this process was on 29 June 2007, although ACMA accepted late submissions on a case by case basis.

ACMA received written submissions from Imparja Television, Broadcast Australia, WIN Corporation and Free TV Australia, which have been placed on the ACMA website.

ACMA staff also held meetings with Free TV Australia and with representatives from WIN Corporation, Prime Television and Southern Cross Ten to answer any questions that may have arisen in relation to the Scheme.

No substantive issues were raised in the submissions received.

Regulatory Impact

ACMA has undertaken a regulatory impact analysis process and considers that the variation to the Scheme is likely to have no or low impact on business or the economy and is not anti-competitive. Consequently, neither a Regulation Impact Statement, nor a Business Cost Calculator Report, is necessary in relation to the regulatory proposal.

Commencement

In accordance with section 2 of the variation, the *Commercial Television Conversion Scheme Variation 2007 (No. 1)* will commence the day after it is registered on the Federal Register of Legislative Instruments.

Notes on the Instrument

Section 1 – Name of Scheme

This section sets out the title of the *Commercial Television Conversion Scheme Variation 2007 (No.1)*.

Section 2 – Commencement

This section provides that the *Commercial Television Conversion Scheme Variation 2007 (No.1)* commences the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Variation of the Scheme

This section sets out that Schedule 1 to the *Commercial Television Conversion Scheme Variation 2007 (No.1)* varies the Scheme.

Part A of the Scheme

Item [1] – After section 3

Item [1] inserts a new section 3A into the Scheme which provides that the Scheme applies to commercial television broadcasting services, other than services specified in subclauses 6(7J), (7K) and (7L) of Schedule 4 to the BSA, namely:

- HDTV multi-channelled commercial television broadcasting services; and
- services operated under a commercial television broadcasting services licence allocated under section 36 of the BSA on or after 1 January 2007; and
- services operated under a commercial television broadcasting services licence allocated under subsection 40(1) of the Act on or after 1 January 2007.

“HDTV multi-channelled commercial television broadcasting service” is defined in clause 5B of Schedule 4 to the BSA.

Item [2] – Subsection 8 (4)

Item [2] amends subsection 8(4) so that the provision applies only for as long as an election made under paragraphs 6(5A)(d) or (5AA)(d) of Schedule 4 to the BSA remains in force. This amendment is consequential to the new rules for revoking multi-channelling elections made under subclauses 6(5A) or (5AA) of Schedule 4 to the BSA.

Item [3] – Subsection 8 (5), including the example

Item [3] inserts new provisions into section 8 which apply when ACMA is making a digital channel plan where an election has been made under paragraphs 6(5A)(d) or (5AA)(d) of Schedule 4 to the BSA. The provisions allow ACMA to:

- keep additional channels in reserve in the digital channel plan for when an election is revoked; and
- vary a digital channel plan if an election is revoked.

These amendments are consequential to the new rules for revoking multi-channelling elections made under subclauses 6(5A) or (5AA) of Schedule 4 to the BSA.

Item [4] – Subsections 9 (3A) to (8)

Item [4] amends section 9 of the Scheme by inserting subsection (5). The new subsection requires that subsection (4) (the requirement to have regard to the objects in subclause 6(5B) of Schedule 4 to the BSA) only applies while an election made under paragraphs 6(5A)(d) or (5AA)(d) of Schedule 4 to the BSA remains in force. This amendment is consequential to the new rules for revoking multi-channelling elections made under subclauses 6(5A) or (5AA) of Schedule 4 to the BSA.

Item [4] also makes amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Additionally, minor amendments have been made to the numbering of the subsections in section 9.

Item [5] – Subsections 14 (3) and (4), including the note

Item [6] – Section 27

Items [5] and [6] make amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments in Item [5] replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

Item [7] – Section 28, heading

Item [8] – Subsection 28 (2)

Items [7] and [8] make minor amendments to clarify the meaning of subsection 28(2).

Item [9] – Subsection 31 (1)

Item [10] – Subsections 32 (3) and (4), including the notes

Items [9] and [10] make amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA.

Item [11] – Section 36

Item [11] amends section 36 of the Scheme so that provisions applying in relation to elections made under paragraphs 6(5A)(d) or (5AA)(d) of Schedule 4 to the BSA only apply for as long as the election remains in force. This amendment is consequential to the new rules for revoking multi-channelling elections made under subclauses 6(5A) or (5AA) of Schedule 4 to the BSA.

Item [11] also makes amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments replace the previous requirement for the ABA to make arrangements for the

ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

Item [12] – Section 39, heading

Item [12] makes amendments to clarify the heading to section 39.

Item [13] – Section 44

Item [14] – Division 5

Items [13] and [14] make amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

Item [15] – Section 52, heading

Item [15] amends the heading to section 52, “Surrender of transmitter licence (SDTV or HDTV standards contravened)” replacing “standards” with “requirements”. This reflects the wording in the heading to subclauses 8(7) and (8) of Schedule 4 to the BSA.

Item [16] – Subsection 52 (1), including the note

Item [16] amends subsection 52(1) to list the amended SDTV and HDTV requirements mentioned in subclause 8(7) of Schedule 4 to the BSA.

Item [17] – Paragraph 52 (2) (b)

Item [17] makes an amendment to paragraph 52(2)(b) of the Scheme to reflect the amended wording of paragraph 8(7)(b) of Schedule 4 to the BSA.

Item [18] – Section 53, heading

Item [18] amends the heading to section 53, “Replacement transmitter licence after HDTV standards contravened” replacing “standards” with “requirements”. This reflects the wording in the heading to subclauses 8(7) and (8) of Schedule 4 BSA.

Item [19] – Subsection 53 (1), including the note

Item [19] amends subsection 53(1) to refer to the HDTV requirements (but not the SDTV requirements) mentioned in subsection 52(1) of the Scheme. These are the same requirements specified in subclause 8(8) of Schedule 4 to the BSA.

Item [20] – Subsections 53 (5) to (8), including the notes

Item [20] makes amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

Item [21] – Section 58

Item [21] amends paragraph 58(1)(b) of the Scheme to reflect the wording of paragraph 8(4)(b) of Schedule 4 to the BSA.

Item [21] also makes amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

Item [22] – Section 69

Item [23] – Section 71

Item [24] – Section 74

Items [22] to [24] make amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

Item [25] – Sections 83 to 87

Item [25] makes amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA.

Item [25] also amends sections 83, 84 and 86 to remove references to section 26 of the Scheme which was removed from the Scheme by the *Commercial Television Conversion Scheme Variation 2000 (No. 1)*.

Other minor amendments replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

Part B of the Scheme

Item [26] – Paragraphs 90 (d) and (e)

Item [26] substitutes new Part B policy objectives in paragraphs 90(d) and (e) of the Scheme.

New paragraph 90(d) inserts a new policy objective as required by subclause 6(7H) of Schedule 4 to the BSA. The policy objective is to allow an exempt remote area service, as defined in subclause 6(7F) of Schedule 4 to the BSA, to be transmitted in SDTV digital mode as part of a multi-channelling arrangement if a multi-channelling election made under subclause 6(7B) is in force.

The provision replaces two previous Part B policy objectives relating to multi-channelling elections made under paragraph 6(5A)(d) of Schedule 4 to the BSA and under former paragraph 102(2)(b) of the Scheme. In both cases these multi-channelling elections no longer apply to remote licence area commercial television broadcasting services.

New paragraph 90(e) inserts a policy objective to commence a simulcast period (as defined by the Scheme) in remote licence areas requiring, as is the case in non-remote

coverage areas, a commercial television broadcaster to transmit simultaneously a service in analog mode and SDTV digital mode when and where it becomes practicable to do so.

Item [27] – Paragraphs 90 (h) to (o)

Item [27] inserts two new Part B policy objectives into section 90, at paragraphs (h) and (k). The new policy objectives deal with the level of coverage and potential reception quality of commercial television broadcasting services transmitted in SDTV digital mode. Item [27] also amends the paragraph references for the existing policy objectives as a consequence of the insertion of these new policy objectives.

Item [28] – Section 90, note 2

Item [28] makes an amendment to note 2 after section 90, consequential to the amendment in Item [26].

Item [29] – Section 90, note 3

Item [29] makes an amendment to note 3 after section 90, consequential to the amendment in Item [28].

Item [30] – Subsections 93 (4) to (7), including the notes and example

Item [30] substitutes existing provisions in section 93 relating to multi-channelling elections made under paragraph 6(5A)(d) of Schedule 4 to the BSA, and under former paragraph 102(2)(b) of the Scheme with new provisions relating to multi-channelling elections made under subclause 6(7B) of Schedule 4 to the BSA. The multi-channelling elections previously referred to no longer apply to Part B of the Scheme.

The new provisions set out what ACMA must include in a digital channel plan where a multi-channelling election made under subclause 6(7B) of Schedule 4 to the BSA is in force.

Item [31] – Paragraph 94 (2) (b)

Item [31] makes an amendment, consequential to the amendments made in Item [26].

Item [32] – Subsection 94 (2) (c)

Item [32] makes an amendment, consequential to the amendment made in Item [31].

Item [33] – Subsection 94 (3)

Item [33] makes an amendment, consequential to the amendment made in Item [31].

Item [34] – Part B, Divisions 4 and 5

Item [34] inserts new Divisions 4 and 5 into Part B of the Scheme. As part of this amendment, former section 102 relating to multi-channelling elections has been omitted. In cases where a multi-channelling election is required, the Scheme now refers to multi-channelling elections pursuant to subclause 6(7B) of Schedule 4 to the BSA.

Division 4

The new Division 4 contains a series of provisions (sections 100 to 127) which set out the rules for the establishment of implementation plans for commercial television broadcasting services in remote licence areas. The Division is similar to Divisions 3, 4

and 5 of Part A of the Scheme which were introduced in 1999 when the Scheme was first made.

Subdivision A

Subdivision A provides the purpose of implementation plans relating to digital transmission. Section 100 specifies that holders of commercial television broadcasting licences must prepare and submit implementation plans to advise ACMA of how the holder proposes to transmit a digital television service, comply with the BSA and meet the policy objectives in section 90 of the Scheme.

The explanatory note inserted after section 100 outlines the process for developing and approving implementation plans. It replicates the analogous note that exists after section 15 in Part A of the Scheme. The note states that at least one plan must be submitted by each holder of a commercial television broadcasting licence for each licence area. An implementation plan may be submitted to ACMA either as a single comprehensive plan for the licence area in question, or as a series of plans that develop the holder's digital transmission arrangements for the area in stages.

Subdivision B

Subdivision B contains provisions relating to the documentation required for the submission of an implementation plan.

Section 101 provides the requirements for the form of an implementation plan. It specifies that ACMA must approve the form of the implementation plan. According to the section, the plan must specify whether it constitutes the entirety of the implementation plan for a licence area or is one of a series of plans. The section also lists the required content both for comprehensive implementation plans and plans submitted in a series.

Sections 102 to 104 relate to the application form for the approval of implementation plans. Section 102 requires that ACMA approve, in writing, the application form and publish a notice stating where copies of the form may be obtained.

The rules for the publication of a notice by ACMA are set out in section 4 of the Scheme. According to section 4, if the Scheme requires ACMA to publish a notice, ACMA must do so in one of the following ways:

- publishing it in a national newspaper;
- publishing it in each State and Territory in a daily newspaper circulating generally in the State or Territory;
- publishing it in the *Gazette*.

Section 4 also permits ACMA to publish a notice in a daily newspaper circulating generally in each relevant State or Territory if it decides that the notice is of significance only to one or more States or Territories.

Finally in addition to complying with the above requirements, ACMA may publish a notice, statement or document in other ways – for example on the Internet, or in an industry or consumer publication.

Section 103 specifies that an application form must require a commercial television broadcasting licence holder to prepare an implementation plan in the form referred to in section 101 and to submit the plan with the application form. Subsection 103(2) provides that the application form must also require the licence holder to identify the starting date, or dates, for digital broadcast. Section 104 lists other types of optional content that the application form may contain. This optional content can include requirements that a licence holder:

- give information as specified in the section (subsections 104(1), (2) and (6));
- make statements about its access to broadcasting transmission locations (subsections 104(3) and (4)); and
- carries out tests or analysis (subsection 104(5)).

Subdivision C

Subdivision C contains provisions relating to the approval process for an implementation plan submitted by a commercial television broadcasting licence holder.

Section 105 provides that a commercial television broadcasting licence holder must apply to ACMA for approval of an implementation plan using the approved application form referred to in section 102 and must prepare the plan in the approved form referred to in section 101.

Subsection (3) requires strict compliance with the approved application form and approved form of the implementation plan and notes that section 25C of the *Acts Interpretation Act 1901* does not apply to these forms.

Section 106 requires ACMA to identify a date by which a commercial television broadcasting licence holder must apply for approval of an implementation plan for a licence area (the “application date”). The application date for a licence area must be before the start of the simulcast period for the area, but after ACMA has made a digital channel plan for any part of the area. ACMA must consult with all licence holders in the area about an appropriate date and may consult with other persons. ACMA must advise each licence holder of the application date as soon as practicable after it is identified.

After the application date has been determined, if ACMA approves a proposal from a licence holder to submit a series of implementation plans, ACMA must identify another date on or by which the licence holder must apply for approval of the first implementation plan in the series. This date must be before the start of the simulcast period for the licence area. ACMA must consult with each licence holder in the licence area and may consult with other persons about the new application date for the licence holder, and must advise each licence holder in the licence area of the new date.

Section 107 provides the process by which ACMA must consider whether an implementation plan submitted by a commercial television broadcasting licence holder is suitable for approval. The section also provides the criteria to which ACMA is to have regard during the approval process (including in circumstances where a licence holder has permission to submit a series of implementation plans).

Section 108 relates to the new Part B policy objectives in paragraphs 90(h) and (k) of the Scheme, which require that the transmission of a commercial television broadcasting service in SDTV digital mode within a licence area achieves the same level of coverage and potential reception quality as is achieved by the transmission of that service in analog mode in that area.

Section 108 applies if the holder of a commercial television broadcasting licence applies for the approval of an implementation plan and the level of coverage and potential reception quality achieved by the service in analog mode has reduced since the commencement of Schedule 4 to the BSA. Schedule 4 to the BSA commenced on 28 July 1998.

In this case ACMA may ask the holder, in writing, to explain how it will ensure that the transmission of the service in SDTV digital mode will achieve the same level of coverage and potential reception quality as the service in analog mode prior to the commencement of Schedule 4 to the BSA. If ACMA asks for an explanation, the holder's implementation plan must ensure that the transmission of the service in SDTV digital mode will achieve the same level of coverage and potential reception quality as was achieved by the service in analog mode prior to the commencement of Schedule 4 to the BSA.

Section 109 relates to the Part B policy objective in paragraph 90(i) in the Scheme which requires that as far as practicable there should be a co-location of analog and digital transmitters used by a commercial television broadcasting licence holder to transmit its analog and digital television services. The section applies if, during the application process for the approval of an implementation plan in a licence area, a licence holder advises ACMA that it is not practicable to co-locate its analog and digital transmitters.

In this case, ACMA must be satisfied that the location of the holder's transmitter in the implementation plan is appropriate, having regard to the criteria in subsection 109(2). The section operates in accordance with subsection 107(4) of the Scheme so that if ACMA is not satisfied that the implementation plan is appropriate according to subsection 109(2), it has the option of deciding that an implementation plan is not suitable for approval under subsection 107(1).

Section 110 permits ACMA to request a commercial television broadcasting licence holder to do one or more things (listed in subsection 110(1)) in order to help it consider the decision on the approval of an implementation plan. The request may be for the licence holder to do or repeat something already required by the implementation plan application form. ACMA is not required to consider the application for the implementation plan while it is waiting for the licence holder to consider the ACMA's written request.

Section 111 provides the process by which ACMA may make a decision that an application for an implementation plan is suitable for approval. If ACMA considers that an application is suitable for approval it must, in writing, approve the application and tell the commercial television broadcasting licence holder of the decision, as soon as practicable after the decision is made.

Under subsection 111(2) if ACMA considers that an application is not suitable for approval it must, in writing, refuse to approve the application, and tell the licence holder of its decision, as soon as practicable. If ACMA refuses to approve the decision it may specify a date by which the holder must apply for approval of another implementation plan and inform the licence holder of the date as soon as possible.

After approving the first implementation plan in a series of plans ACMA must specify as many of the dates relating to this series as it considers appropriate – that is, the dates by which the licence holder must apply for approval of specific implementation plans in the series, including the date by which the licence holder must apply for approval of the last plan in the series.

The note after subsection 111(3) states that a decision refusing to approve an application for an implementation plan is reviewable by the Administrative Appeals Tribunal (AAT). This is pursuant to paragraph 62(1)(a) of Schedule 4 to the BSA.

Section 112 allows a commercial television broadcasting licence holder to submit a new implementation plan to ACMA by the date (if any) specified under paragraph 111(3)(a) in circumstances where ACMA refuses to approve a plan already submitted. When preparing a new plan the licence holder is not required to deal with the same matters (including geographical areas, or transmitters) as were dealt with in the refused plan. The licence holder may apply for approval to submit a series of implementation plans if it does not already hold that approval.

Another application form must only be provided with the new implementation plan if ACMA requests it. Subsection 112(6) specifies that the licence holder must complete the application form and prepare the plan in the way described in section 100F of the Scheme. ACMA must deal with the application in the same way as the previous application (as specified in sections 107 to 111 of the Scheme).

Section 113 provides that if approved by ACMA, an implementation plan takes effect as the commercial television broadcasting licence holder's "approved implementation plan" for the licence area (or for the appropriate part of the licence area if the plan is one of a series of plans) on the day that the application was approved.

Section 114 requires ACMA to maintain a register of approved implementation plans, to be made available for public inspection. Members of the public are entitled to request a copy of or extract from any entry in the register, and if such a copy or extract is certified by a Member of ACMA it is admissible in all courts and proceedings without further proof or production of the original entry in the register.

The register is available on ACMA's website at:

http://www.acma.gov.au/WEB/STANDARD//pc=PC_91857

Subdivision D

Subdivision D contains one provision, section 115, relating to the issue of transmitter licences to a commercial television broadcasting licence holder authorising digital transmission, following the approval of an implementation plan.

Section 115 requires ACMA to issue to the commercial television broadcasting licence holder one or more transmitter licences to authorise the licence holder to transmit its

television broadcasting service in digital mode in a given licence area after an implementation scheme has been approved. One licence must be issued for each radio-communications transmitter specified in the implementation plan as being necessary to deliver the television broadcasting service.

Alternatively, if the licence holder already holds a suitable transmitter licence for the remote licence area for which the implementation plan applies, ACMA may vary that licence so that it authorises the operation of a transmitter pursuant to the approved implementation plan. A similar provision applies for test transmitter licences, except that ACMA is required to vary such a licence if it is necessary to authorise the operation of a transmitter pursuant to the approved implementation plan.

If necessary, ACMA may undertake a combination of issuing new transmitter licences and varying existing transmitter licences.

Subclause 115(4) applies where a licence holder has made a multi-channelling election under subclause 6(7B) of Schedule 4 to the BSA. In this case, ACMA must ensure that the transmitter licence as issued or varied authorises the operation of one or more transmitters for transmitting the commercial television broadcasting services in digital mode using multi-channelling transmission capacity, in accordance with the election. The transmitter licence for the services to be multi-channelled must be issued to the holder of the section 38B exempt licence, who is required to provide evidence that it will transmit the services of the other licence holders in SDTV digital mode, subject to the multi-channelling election whilst the licence is in operation. ACMA may alter the transmitter licence, or require it to be surrendered if the multi-channelling election is revoked.

In issuing or varying transmitter licences, ACMA must identify any conditions that apply to the licence, including the date of effect of the licence, and issue or vary the licence accordingly. The date of effect of the licence will usually correspond to the date specified in the implementation plan.

Subdivision E

Subdivision E contains provisions detailing the process for varying implementation plans. It has been adopted from Division 4 of Part A of the Scheme. The Subdivision is similar to Division 4 of Part A of the Scheme which was introduced in 1999 when the Scheme was first made.

Section 119 provides the requirements for an application form for the approval of a variation to an implementation plan. ACMA must approve the application form in writing and publish a notice (as discussed above) stating where copies of the approved form may be obtained.

Section 120 provides that a commercial television broadcasting licence holder seeking to vary an approved implementation plan must apply to ACMA for approval of the variation, unless it occurs pursuant to section 122 of the Scheme (that is, either expressly or impliedly as a result of a later implementation plan submitted as part of a series of plans approved by ACMA). The application form used to vary an existing plan must be the approved application form (referred to in section 119 of the Scheme). The section

notes that strict compliance with the approved form is required, and that section 25C of the *Acts Interpretation Act 1901* does not apply to the approved application form.

Subsection 120(5) provides that each application for variation may only deal with one approved implementation plan.

Section 121 provides the process by which ACMA must consider any application for the variation of an implementation plan. The section requires ACMA to consider whether an application is suitable for approval, considering the implementation plan as it would be in its varied form as outlined in sections 107 to 111. ACMA may decide whether it is appropriate to invite comments on the application, and if so, whether the public consultation procedure outlined in section 95 of the Scheme (in relation to digital channel plans) is appropriate for this purpose. If ACMA does invite comments it must have regard to any comments received when considering the application.

Section 122 applies if ACMA has approved a commercial television licence holder's application to submit a series of implementation plans for an area, and an application for an implementation plan that expressly or impliedly varies an earlier approved plan in the series is submitted for approval. Section 122(2) provides that this application will be taken to include an application for approval of the variation of the earlier approved plan. That is, no additional application is required. ACMA must then consider whether the application is suitable for approval by considering the earlier approved plan in its varied form pursuant to sections 107 to 111. ACMA must also have regard to the matters in subsection 107 (5) for the entire licence area and for the part of the area to which the earlier approved plan relates.

ACMA may decide whether it is appropriate to invite comments on the application, and if so, whether the public consultation procedure outlined in section 95 of the Scheme (in relation to digital channel plans) is appropriate for this purpose.

Section 123 provides for ACMA's decision whether to approve an application to vary an implementation plan (including an application referred to in section 122 (2) of the Scheme). The provision specifies that after making a decision whether to approve or refuse to approve an application to vary an implementation plan, ACMA must put its decision in writing and inform the commercial television broadcasting licence holder of that decision (in writing) as soon as practicable.

Section 124 specifies that, if approved by ACMA, the variation of an approved implementation plan takes effect on the day that ACMA approves it. The commercial television broadcasting licence holder's implementation plan, as varied, also takes effect on the day that ACMA approves it.

Section 125 requires ACMA to update the register of approved implementation plans with the details of a varied implementation plan once the variation is approved.

Section 126 requires ACMA to vary a transmitter licence issued under section 102A of the *Radiocommunications Act 1992* in a licence area if it approves a variation to the approved implementation plan in that area, and the variation requires a consequential variation to the transmitter licence.

Subdivision F

Subdivision F contains section 127 which relates to the issuing of transmitter licences to a commercial television broadcasting licence holder in situations where there is no approved implementation plan.

Section 127 applies where, at the start of the simulcast period for a licence area, a commercial television broadcasting licence holder will not have an approved implementation plan in force and will not have a transmitter licence issued pursuant to Divisions 10 (for test transmissions) or 11 (for transmissions prior to the start of the simulcast period). In these situations, ACMA must issue a transmitter licence authorising the operation of one or more radiocommunications transmitters for the broadcast of a commercial television service in digital mode. The licence is to commence at the beginning of the simulcast period and is to be issued subject to any conditions imposed by ACMA.

Division 5

New Division 5 provides for section 128 which allows a commercial television broadcasting licence holder, that holds a datacasting licence issued in accordance to Schedule 6 to the BSA, to use any spare transmission capacity available on an allotted digital channel to provide a datacasting service (under, and subject to the conditions of, the datacasting licence) or a designated teletext service.

Item [35] – Paragraph 138 (2) (b)

Item [35] removes a reference to the multi-channelling election formerly mentioned in section 102 of the Scheme. Section 102 was substituted as a consequence of the establishment of the “special rules” under subclause 6(7B) of Schedule 4.

Item [36] – Paragraph 138 (2) (c)

Item [36] makes an amendment, consequential to the amendment made in Item [35] and renumbers paragraph 138(2)(c) and paragraph 138(2)(b).

Item [37] – Subsections 138 (3), note

Item [37] makes an amendment, consequential to the amendment made in Item [27].

Item [38] – Subsections 139 (4) and (5), including the notes

Item [38] makes amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA.

Item [39] – Part B, after Division 7

Item [39] inserts new Divisions 8 and 9 into Part B of the Scheme.

Division 8

The new Division 8 contains a series of provisions (sections 140 to 143) intended to require commercial television broadcasting licence holders in remote licence areas to surrender one or more transmitter licences for a digital service if certain requirements relating to digital transmission are not met. The Division is similar to Division 8 of Part A of the Scheme which was introduced in 1999 when the Scheme was first made.

Section 140 requires a licence holder to surrender its transmitter licence to ACMA if it does not commence SDTV digital transmission for a remote licence area by the

commencement date determined pursuant to section 138 of the Scheme and does not satisfy ACMA that there are exceptional circumstances for the failure to commence transmission.

The section permits the commercial television broadcasting licence holder to make an application to the AAT for review of a decision that there were no exceptional circumstances.

Section 141 requires a licence holder to surrender its transmitter licence to ACMA if it does not continue an SDTV digital transmission throughout a simulcast period after ACMA has given the licence holder a written direction to do so; or if it does not satisfy ACMA that there are exceptional circumstances for the failure to continue the transmission.

The section permits the commercial television broadcasting licence holder to make an application to the AAT for review of a decision that there were no exceptional circumstances.

Section 142 requires a licence holder to surrender its transmitter licence to ACMA if it contravenes one of the requirements listed in the section (which reflects the requirements listed in subclause 8(10) of Schedule 4 to the *Broadcasting Services Act 1992*) and then does not:

- comply with a direction from ACMA to comply with the requirement; or
- satisfy ACMA that there are exceptional circumstances for the failure to comply with the requirements.

The section permits the commercial television broadcasting licence holder to make an application to the AAT for review of a decision that there were no exceptional circumstances.

Section 143 allows a licence holder to ask ACMA to issue a transmitter licence to replace a transmitter licence surrendered due to a failure to comply with an HDTV requirement listed in paragraphs 142(1)(a), (c), (d) or (e) of the Scheme. In doing so, the licence holder must explain why the replacement licence should be issued.

The section permits ACMA to request more information from the licence holder before considering the request and upon consideration requires ACMA to approve or reject the request.

If a request made under this section is approved, ACMA is required to issue a replacement transmitter licence. As required by subclause 8(10A) of Schedule 4 to the *Broadcasting Services Act 1992*, the amount of transmission capacity covered by the replacement licence must be less than the amount of transmission capacity covered by the surrendered licence.

Division 9

The new Division 9 contains a series of provisions (sections 144 to 148) setting out what ACMA must do at the end of the simulcast period for a licence area. This Division is similar to Division 9 of Part A of the Scheme which was last amended by the *Commercial Television Conversion Scheme Variation 2000 (No. 1)*.

Section 144 requires ACMA to consider whether, for the purpose of allotting digital channels at the end of a simulcast period, the existing channel plan should be varied, or whether a new digital channel plan must be made. The section lists the matters which ACMA is to consider when making this decision. When making this consideration ACMA must have regard to the criteria in subsection 144(2).

Section 145 applies if ACMA decides to vary an existing digital channel plan. In this case, ACMA must publish a notice (as described in relation to section 102 in Item [34], above) containing the matter mentioned in paragraphs 145(1)(a) and (b). When considering the form of the variation ACMA must have regard to the criteria in subsection 145(2). ACMA may also have regard to any of the matters mentioned in paragraphs 94(4)(a), (b), (c), (d) and (e).

ACMA must vary the digital channel plan before the end of the simulcast period and in such a manner as to allow the plan, as varied, to commence from the end of the simulcast period. ACMA must also publish a notice (as described in relation to section 102 in Item [34], above) stating where copies of the variation may be obtained.

Section 146 provides that if ACMA decides to make a new digital channel plan subsections 92(2) and (3) and sections 93 to 97 apply. ACMA must make the new digital channel plan before the end of the simulcast period and in such a manner as to allow the plan to commence from the end of the simulcast period.

Section 147 requires all transmissions of commercial television broadcasting services in analog mode to cease in a licence area where a simulcast period has ended. A commercial television broadcasting licence holder must surrender all transmitter licences that authorised transmission of those services in the area during the simulcast period. A licensee surrendering such licences must comply with any requirements of ACMA for surrendering the licence.

Section 148 requires ACMA to issue to a commercial television broadcasting licence holder one or more transmitter licences for the transmission of services in digital mode for use from the end of the simulcast period. The licences must take effect from the end of the simulcast period, and authorise the licence holder to transmit its service in digital mode using channels allotted by ACMA under a digital channel plan varied or made under section 145 or 146, respectively.

ACMA must also identify the conditions which are to apply to such a licence and issue the licence with those conditions.

Item [40] – Section 159

Item [41] – Section 161

Item [42] – Section 164

Items [40] to [42] amend sections 159, 161 and 164 of the Scheme so that they apply in circumstances where a multi-channelling election made under subclause 6(7B) of Schedule 4 to the BSA is in force, rather than where elections made under paragraph 6(5A)(d) of Schedule 4 to the BSA or the former paragraph 102(2)(b) of the Scheme are in force. These changes are consequential to the insertion of special rules for multi-channelling elections in remote licence areas into Schedule 4 of the BSA. The provisions

continue to apply to commercial television broadcasting licence holders that are not subject to a multi-channelling election under subclause 6(7B) of Schedule 4 to the BSA.

These Items also make mechanical amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

Item [43] – Subsection 170 (4)

Item [43] makes an amendment to subsection 170(4), consequential to the amendment made in Item [26].

Item [44] – Section 173

Item [44] amends section 173 of the Scheme so that it applies in circumstances when a multi-channelling election made under subclause 6(7B) of Schedule 4 to the BSA is in force, rather than where elections made under paragraph 6(5A)(d) of Schedule 4 to the BSA or the former paragraph 102(2)(b) of the Scheme are in force. The changes are consequential to the insertion of special rules for multi-channelling elections in remote licence areas into Schedule 4 of the BSA. The provision continues to apply to commercial television broadcasting licence holders that are not subject to a subclause 6(7B) multi-channelling election.

These Items also make amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

Item [45] – Part B, Division 12

Item [45] makes amendments to Division 12 of Part B of the Scheme consequential to the creation of special rules for multi-channelling elections that apply to commercial television broadcasting services in remote licence areas inserted in subclause 6(7B) of Schedule 4 of the BSA.

The Item also makes mechanical amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA.

Item [46] – Section 178, note

Item [46] makes an amendment, consequential to the amendment made in Item [27].

Item [47] – Section 179, note

Item [47] makes an amendment, consequential to the amendment made in Item [27].

Item [48] – Section 180, note

Item [48] makes an amendment, consequential to the amendment made in Item [27].

Item [49]– Dictionary, definition of *ACA

Item [50] – Dictionary, after definition of *digital transmitter licence*

Item [51] – Dictionary, after definition of **HDTV digital mode*

Item [52] – Dictionary, after definition of **multi-channelled national television broadcasting service*

Item [53] – Dictionary, after definition of *national television conversion scheme*

Item [54] – Dictionary, after definition of *remote licence area*

Item [55] – Dictionary, definition of **SDTV digital mode*

Items [49] – [55] amend the dictionary of the scheme to reflect new terms and changes to definitions of existing terms in the BSA.

Item [56] – Further variations

Item [56] makes a series of amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA.